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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

112740-1117

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on _____

Signature_____

Typed or printed name _____

Application Number

10/562,846

Filed

December 29, 2005

First Named Inventor

Albert Ratermann

Art Unit

2618

Examiner

Y. Pan

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96) attorney or agent of record. 43,148
Registration number _____ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____


Signature

Kevin R. Spivak

Typed or printed name

(202) 955-7007

Telephone number

January 18, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Albert Ratermann
Appl. No.: 10/562,846
Conf. No.: 8277
Filed: December 29, 2005
Title: METHOD FOR OPERATING A SHORT HAUL RADIO
TRANSMITTING/RADIO RECEIVING SYSTEM
CONFORMING TO A SHORT HAUL RADIO
COMMUNICATION STANDARD AND A MASTER
DEVICE FOR IMPLEMENTING SAID METHOD
Art Unit: 2618
Examiner: Yuwen Pan
Docket No.: 112740-1117

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF

Sir:

This request is submitted in response to the Office Action dated October 18, 2007. This request is filed contemporaneously with USPTO form PTO/SB/33, "Pre-Appeal Brief Request for Review," form PTO/SB/31 and "Notice of Appeal."

REMARKS

I. The Rejections to Claims 6-10 Under 35 USC 103 are Improper

Claim 6 was rejected under 35 U.S.C. §103(a) as being unpatentable over Fujioka (US Patent 6,907,227) in view of Fujita (JP 2002064512). Claims 7-10 were rejected under 35 U.S.C. §103(a) as being unpatentable over Fujioka (US Patent 6,907,227) in view of Fujita (JP 2002064512) and further in view of Manish (XP-000968001). Applicant respectfully traverses these rejections. Applicant's response presumes the rejection to "claim 5" (see page 4 of Office Action) is a typographical error, and that claim 6 was intended.

Regarding claim 6, the prior art, alone or in combination fails to teach or suggest the features of "switching the parked devices exceeding the maximum number into an active mode,

according to a predefined strategy; continually switching active devices into a park mode according to the predefined strategy; and switching at least one further device, in addition to a minimum number of devices continually switched to the park mode, from an active mode device to a park mode.” The present claims are directed to short-haul transceiver systems (e.g., Bluetooth™), where up to eight devices can be combined in a pico cell, into a piconet to allow communication among the devices. Conventionally, when there are more than 7 devices on a piconet, the devices exceeding the number 7 will be switched to a park mode. Also, according to a predefined strategy, parked devices will be switched to an active mode and active devices will be switched into a parked mode. However, one of the disadvantages of conventional systems is that, when a parked device is to be switched to an active mode, an active device first has to be switched to a parked mode. Such a configuration takes time, where the device requiring to be switched to active mode must wait for time to elapse before it can be switched to active. By arranging the switching/continual switching of active/park modes according to the predefined strategy, and switching at least one further device, in addition to the devices continually switched to the park mode, from an active mode device to a park mode, the delay times are minimized.

Fujioka discloses a conventional method of controlling wireless communication between a master terminal and slave terminals, including; a) establishing a connection between the master terminal and a predetermined maximal number of the slave terminals to have active slave terminals; b) identifying remaining unconnected slave terminals as inactive slave terminals in case a number of the slave terminals exceeds the predetermined maximal number; c) removing one of the active slave terminals from the connection to turn into an inactive slave terminal while establishing one of the inactive terminals for the connection with the master terminals in case the number of the slave terminals exceeds the predetermined maximal number; d) repeating the step c) until every one of the slave terminals is at least once connected with the master terminal; and e) communicating among the master terminal and the active slave terminals until a predetermined condition is met (col. 2, lines 13-30). As the Office Action concedes, Fujioka fails to teach that at least one further device will be switched to the park mode in addition to the minimum number of devices switched to the park mode (Office Action page 2, last line - page 3, line 1).

In this regard the Office Action turns to Fujita for solving the alleged deficiencies. Applicant notes that Fujita's U.S. counterpart is US Patent 7,088,691 - accordingly, citations to Fujita in this Response will be directed to the US Patent.

Fujita discloses a Bluetooth network (FIG. 1), where a transmitting device "trumps" slave devices to allow for prioritized transmission (col. 1, lines 42-50). Under the disclosure of Fujita, the master device (camera 2) sets up a link with a slave device (printer 3). To establish priority, the master device (digital camera 2) performs a broadcasting process for priority use of the network for all the slave stations within the wireless communication network 1. Using this process, the master device informs the slave devices that the wireless communication network 1 is just going to be used for communication between the master device and the linked slave device (printer 3) with high priority (step 3, FIG. 2). Specifically, the master device sends each slave station a broadcasting message of transition to the park mode (notification of priority use of the network). Upon receipt of the broadcasting message, each slave station is moved to the park mode in which the slave station does not make a request for communication, thus limiting each slave station's use of the wireless communication network 1 (col. 2, lines 58-67). Since the master device has already had the negotiation process with the linked slave device (printer 3), the linked slave will receive data from the master, and does not move to the park mode even upon receiving the broadcasting message of transition to the park mode (col. 3, line 1-10). After completion of the data transmission process, the digital camera 2 as the master station performs another broadcasting process to inform each slave station of release of the wireless communication network 1 (step S5), and it ends the operation process. Specifically, the digital camera 2 sends each slave station a broadcasting message of a request for return to a normal mode (notification of network release) to return each slave station from the park mode to the normal operating state (col. 3, lines 11-22).

Thus, Fujita does not disclose "switching at least one further device, in addition to a minimum number of devices continually switched to the park mode, from an active mode device to a park mode." Under Fujita, the printer is not parked (see col. 2, lines 54-57), and all of the remaining devices are transitioned to a park mode (col. 3, line 1-4: "each slave station is moved to the park mode"). It follows that Fujita does not disclose a minimum number of devices, for the same reasons given above.

Applicant further submits that there is no apparent reason to combine *Fujita* with *Fujioka* in the manner suggested in the Office Action. Applicant respectfully submits that the Office Action has improperly piecemealed individual features from multiple references to arrive at the present rejection. “[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR Int'l Co. v. Teleflex Inc.* 550 U.S. ____ (2007) (slip op. at 14). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Appellant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). It is “impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious.” *In re Fritch*, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992). “One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention” *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). “A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments relying on *ex post* reasoning.” *KSR v. Teleflex*, at 17.

Under *Fujioka*, the activation/parking of slaves is conducted in a manner to allow rule-based piconet connection in applications such as videoconferencing to provide efficient transmission among devices (col. 1, line 65 - col. 2, line 8). *Fujioka* deals with the connection limitations of Bluetooth (i.e., the number of slave device connections) by singularly removing specific slave terminals while establishing connections with other slave terminals (col. 2, lines 22-28). The process is repeated until certain conditions are met (col. 2, lines 29-30). In contrast, *Fujita* deals with an entirely different Bluetooth application, where all devices are transitioned to a park mode, except for the original slave linked by the master. There is no apparent reason why one skilled in the art would apply the teaching of *Fujita* to *Fujioka*, since the resulting combination would park all of the devices of *Fujioka* - which is expressly contrary to the teaching in *Fujioka*.

The Examiner, in paragraph 1 on page 2 of the Office Action dated October 18, 2007, responds to Applicant’s arguments in the previously filed reply. Here, the Examiner repeats his position that Fig. 1 and the abstract of *Fujita* disclose “switch[ing] more than one slave station (the minimum number of slave station could be switch to park mode) in order to maintain a

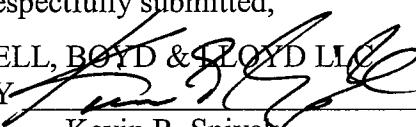
certain throughput...." However, there is no disclosure of switching at least one further device, in addition to a minimum number of devices switched to the park mode, from an active mode device to a park mode, as required by the claimed invention. Rather, Fujita only states that a master and slave conduct data transmission, while the other slave devices are in standby. When the communication ends, the slave stations are returned to a normal operating state. Hence, it is not possible to switch at least one further device, as no further devices remain, nor can it be switch in addition to a minimum number of devices already switched in the standby mode.

For at least these reasons, Applicant submits the rejection is traversed and should be withdrawn.

II. Conclusion

In light of the above, the Applicants submit that all the claims are both novel and non-obvious over the prior art of record. Accordingly, the Applicants respectfully request that a Notice of Allowance be issued in this case. If any additional fees are due in connection with this application as a whole, the Director is authorized to deduct said fees from Deposit Account No.: 02-1818. If such a deduction is made, please indicate the attorney docket number (112740-1117) on the account statement.

Respectfully submitted,

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